

HARNES DICKY

Harness Dickey & Pierce PLC
Attorneys and Counselors
7700 Bonhomme, Suite 400
Clayton, Missouri 63105
Phone: 314-726-7500 Fax: 314-726-7501
Metropolitan: Detroit St. Louis Washington, DC



DATE: November 12, 2008

No. OF PAGES (INCLUDING THIS PAGE): 7

FOR: John J. Doll, Commissioner

COMPANY: United States Patent and Trademark Office

FAX NO.: 571-273-0125

PHONE:

ORIGINAL WILL FOLLOW BY:

- ☐ REGULAR MAIL
☐ OVERNIGHT MAIL
☐ COURIER
☒ WILL NOT FOLLOW

FROM: Michael L. Smith

Please let us know by phone or fax if you do not receive any of these pages.

COMMENTS:

Re: U.S. Patent Application No. 10/673,296

NOTICE

The information contained in this fax transmission is intended only for the individual to whom or entity to which it is addressed. It may also contain privileged, confidential, attorney work product or trade secret information which is protected by law. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering the message to the addressee, the reader is hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the address above via the U.S. Postal Service. We will reimburse you for any reasonable expense (including postage) for the return of the original message.



Michael L. Smith
(314) 446-7646
mlsmith@hdp.com

November 12, 2008

VIA FACSIMILE: 571-273-8300

Mr. David Bucci
Petitions Examiner
Office of Petitions
P.O. Box 1450
Alexandria, Virginia 22314

Re: U.S. Patent Application No.: 10/673,296
Mittlestein, et al.
In the name of Bausch & Lomb Incorporated
Our Ref: P03115

Dear Mr. Bucci:

This is in response to the Decision Refusing Status Under 37 CFR 1.47(a) mailed on 1 October 2008 by the Office of Petitions concerning application 10/673,296. I believe a failure in the Patent Office's procedures has occurred and resulted in the premature issuance of application 10/673,296 as US Patent 7,445,436. Somehow, the application continued to issuance even though the Office of Petitions was working with me to obtain a properly signed declaration from one joint inventor.

A petition under 1.47(a) was dismissed and a two month period, starting from the 1 October 2008 mailing date, was set to correct a deficiency set forth in the Decision. I set about curing the deficiency by sending, via FedEx, a new declaration to joint inventor Robert Schauer, on 24 October 2008 listing all the inventors. The signed declaration was received back from Mr. Schauer on 10 November 2008, and is attached to this letter.

I was preparing to forward the signed declaration to the Office of Petitions, when I became aware that US Patent 7,445,436 had issued before a proper declaration was filed.

-2-

I am requesting that the properly signed declaration attached to this letter be entered into the file of application 10/673,296 because, through no fault of mine or the applicant, the patent issued before a properly signed declaration was filed.

Respectfully submitted,



Michael L. Smith
Reg. No. 35,685

MLS:csy

Attachment – Declaration and Power of Attorney

cc: John J. Doll, Commissioner of Patents
John J. Love, Deputy Commissioner for Patent Examination Policy
Peter Bertheaud, Examiner